

The complaint

Mr A complains that Lloyds Bank PLC (Lloyds) declined to meet his claim for a refund in respect of a property reservation fee he paid for using his credit card.

What happened

Mr A had an agreement with a company I'll call E to provide a bespoke property sourcing service in return for a fee. Mr A paid this fee via bank transfer.

In September 2021 E sourced a property that Mr A wanted to purchase. Mr A entered into a separate reservation agreement with E on 17 September 2021 and paid it a fee of £3,990 using his Lloyds credit card.

The terms of the agreement said the fee was refundable if Mr A withdrew from the prospective purchase within 14 days of entering into it but not after this.

If withdrawal happened after this, and was the result of a survey result which deemed the property unviable, the terms said E would offer a 'replacement property'.

Mr A carried out a Homebuyer's report in October 2021 which identified some issues with the structure of the property. He engaged a structural surveyor shortly after which confirmed there were serious issues.

Mr A asked E to re-negotiate with the seller for a lower price or for it to complete the structural work first. But the seller did not accept any of the new proposals.

On 25 October 2021 E agreed with Mr A that the purchase was not viable. It said it would look to find a replacement deal for Mr A as soon as possible and at no cost to him. But it said it would not agree to any deadlines for this.

In around March 2022 Mr A asked Lloyds for help getting his money back. He said E hadn't offered him a replacement property in reasonable time.

Lloyds looked at Mr A's claim for a refund but declined to meet it. Lloyds said there had not been a breach of contract or misrepresentation by E so it wasn't liable to him.

I issued a provisional decision in November 2022 setting out why I thought Mr A's complaint should be upheld in part. The relevant parts are summarised below and form part of this final decision.

- In deciding whether Lloyds had treated Mr A fairly, I considered its potential liability to him under relevant law such as Section 75 Consumer Credit Act 1974 ('Section 75').
- Subject to certain criteria having been met (which had been in this case), Mr A could bring a claim against Lloyds under Section 75 in respect of transactions it financed where there had been a breach of contract or misrepresentation by E.

- Lloyds did not finance Mr A's purchase of the services delivered under the property sourcing agreement. So, it had no liability to him under Section 75 for things that may have gone wrong with those services.
- Mr A's contract with E (the property reservation agreement) set out that if Mr A and E agreed a purchase was not viable following a survey, E would provide a replacement property to Mr A.
- Mr A and E agreed the prospective purchase was not viable following the results of a structural survey he'd had completed.
- E was therefore contractually obliged to provide a replacement property.
- Replacement property had not been defined in the contract.
- I couldn't be sure exactly how a court would have interpreted what was meant by replacement property. But I thought a reasonable interpretation, taking the natural reading of the clause, was that it meant something broadly similar to that of the original property that fell through.
- E hadn't provided a replacement property over a year after saying it would do so.
- Either the Consumer Rights Act 2015 ('CRA') or the Supply of Goods and Services Act 1982 ('SGSA') (the former if Mr A could be considered a consumer under its definitions, the latter if not) set out that where no time had been fixed for a service to be performed, it was implied in the contract that it would be performed within a reasonable time.
- The test in both of the legislation as to what constituted reasonable time was a question of fact.
- There had to be a cut off for what was not reasonable time and while it wasn't for me to determine that precise point, if there was one, it had been passed in the circumstances of this case.
- It was likely therefore that E had breached the implied term in its contract with Mr A to provide its services in a reasonable time.
- Thinking overall about what was fair and reasonable, I didn't think Lloyds had handled Mr A's request for a refund fairly. And he'd lost out as a result as he didn't get a refund it looked like he was entitled to.
- I planned to tell Lloyds to pay Mr A 90% of the sum he paid to E – totalling A £3,591 plus interest. I thought it was fair that a deduction of 10% was made for the small amount of work E had likely done with respect to original property.

Lloyds accepted my provisional decision.

Mr A provided some comments in response to it. He said, in summary:

- The sum he paid for the separate property sourcing agreement should be considered a consequential loss as it was associated with the property reservation agreement. The purpose of the property sourcing agreement is to find a property that then leads on to a property reservation agreement so the two are unavoidably linked.
- E told him in an email it would source a replacement property at no cost to him. He shouldn't have to pay 10% of the cost of a service that did not fulfil its primary purpose.

The matter has now therefore been returned to me for a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Lloyds has not challenged the reasons for upholding Mr A's complaint in my provisional decision. So, I see no reason to change them from those set out in the summary of my provisional decision above which forms part of this decision. Ultimately E likely breached its contract with Mr A by failing to provide the agreed services within a reasonable time. And he likely had a valid claim under Section 75, so Lloyds unfairly turned down his request for a refund. It's fair Mr A receives compensation for that.

Where there is challenge from Mr A is on how much that compensation should be and whether he should also be paid the cost of the property sourcing agreement as a consequential loss.

I don't consider the cost of the sourcing agreement to be a loss that flows from E's breach of contract. It's likely the agreement is still able to operate independently from the reservation agreement and the terms state it is to 'remain in force in perpetuity'.

The agreement was not entered into solely for the purposes of the exact property that was found for Mr A, and it looks to have been possible for a customer to continue to require E to source property after the successful/unsuccessful purchase of another. So, I don't agree the two agreements were unavoidably linked. I don't therefore find that Lloyds should pay the cost of the property sourcing agreement to Mr A.

On Mr A's point about the amount of compensation, it's possible a court would have awarded 100% of the cost of the reservation agreement but it's also possible E might have successfully argued that it should receive some payment for the work it likely completed.

Ultimately, I need to decide what is fair and reasonable in this complaint. And I think it's fair that any compensation reflects the fact that it's likely E did carry out a small amount of work for Mr A in respect of the original purchase – such as securing his initial offer and renegotiating with the seller after the surveyors report had been completed. I see also in its communications with Mr A after the purchase fell through that it told him it was still searching for an appropriate replacement.

There's no science to putting a price on this work. I've assessed this at 10% of the overall sum Mr A paid to E and I still find that to be a reasonable sum.

Everything considered I still find Lloyds should pay Mr A compensation of £3,591 plus interest.

My final decision

For the reasons I have explained above, I uphold Mr A's complaint. To put things right Lloyds Bank PLC must pay Mr A £3,591 plus 8% simple interest from when it declined his claim on 17 March 2021 until the date of settlement*.

*If Lloyds Bank PLC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr A how much it's taken off. It should also give Mr A a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 13 January 2023.

Michael Ball
Ombudsman

